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November 5, 2004

Polly Lowry  
Regional Water Quality Control Board, Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670

***Re: Comments regarding the Administrative Draft National Pollutant Discharge Elimination System General Permit and Waste Discharge Requirements General Order for Existing Concentrated Animal Feeding Operations (Milk Cow Dairies)***

Dear Ms. Lowry:

Western United Dairy Men has reviewed the administrative draft of the above named document. While we appreciate the opportunity to provide comments, we are dismayed by the apparent disregard of the comments and technical information we previously provided to the regional board. While we have several comments regarding the specifics of the administrative draft, our greatest concern is with the underlying philosophy of the proposed program.

We are aware of the requirements imposed by the new Concentrated Animal Feeding Operation (CAFO) rule from the United States Environmental Protection Agency (USEPA) but note that many of the requirements proposed in the administrative draft go well beyond what is required by the CAFO rule. It is important to note that by doing so, the proposed requirements will impose a significant competitive disadvantage on California dairy farmers relative to those in neighboring states, and may well lead to market disruptions within California's milk market. Additionally, we expect that if the permit is not modified, it will very likely stimulate a migration of dairies to other states, further jeopardizing the business health of California.

Western United Dairy Men will focus our comments on four major issues we wish to call to the attention of the regional board, all of which reflect the basic philosophic approach of the administrative draft. These are: (1) the costs of compliance; (2) the failure to recognize and utilize the California Dairy Quality Assurance Program; (3) the lack of compliance incentives; and (4) dependence on groundwater monitoring wells.

As currently written, the administrative draft will generate a mountain of paperwork, and misdirect a dairy farmer's efforts away from on-farm water quality protection activities. We would far rather see dairy farmers concentrating on protecting water quality than filling out reports. Western United Dairy Men does not believe the requirements of the permit, including those for facility reporting and monitoring, the initial application, Waste Management Plan development, Nutrient Management Plan development, and monitoring well installation and testing, will be possible for a dairy farmer to complete without the use of an outside consultant. Therefore, we have contracted with EAC Engineering of Turlock, a firm that services a large dairy clientele, to prepare a report describing the anticipated costs of compliance with the

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requirements of the draft permit. Although we expected a substantial cost, we were shocked by the resulting estimate. The cost of compliance with the terms of the draft permit is drastic. The report is attached for your reference. Please give serious attention to the information it contains.

We sincerely believe that there is a better way to accomplish the permitting of CAFOs. We have repeatedly requested interaction between the regional board and our representatives. We have always indicated our willingness to conduct meaningful and collaborative discussions with other stakeholders. Unfortunately, our requests have not been successful. We have had meetings and our comments have been noted, but we have not been able to participate in any significant opportunity to engage in a productive "give and take" with staff or board members regarding the basic tenets of the program. From our perspective, the draft has been developed in a vacuum, and it would benefit substantially from enhanced stakeholder participation.

We do not criticize the administrative draft without providing a viable and effective alternative. We are very concerned about the failure of the draft to utilize, or even to recognize, the California Dairy Quality Assurance Program (CDQAP). We have a world-class environmental stewardship program, involving widely based partnerships, and an educational system that has reached most of the dairy farmers of the state. We include a program of third-party certification to verify that management plans, procedures and the necessary infrastructure is in place to accomplish compliance with all local, state and federal rules and regulations. Yet the administrative draft assigns tasks to engineering consultants even though CDQAP has repeatedly demonstrated it is capable and proficient in performing those tasks. The draft relies on engineering and consulting services from the private sector to provide verification of compliance, and in certain instances, assurance of management performance. This seems to ask professionals to provide assurances beyond their professional responsibilities. We do agree that registered engineers are appropriate for structural security of new construction, but beyond structural issues, it is not appropriate or efficient to require an engineer, especially for management-related issues. By mandating engineering and other consultants for other than structural design, the administrative draft effectively removes any motivation for a dairy farmer to participate in the CDQAP. In and of itself, if ultimately implemented, the current administrative draft will destroy the California Dairy Quality Assurance Program and topple six years of enhanced environmental stewardship on California dairies.

The administrative draft suffers severely in that it provides no positive incentives for dairy farmers. In reality, the draft punishes those dairies that are in compliance and doing a good job just as severely as those who are not. This is a serious inequity that must be repaired if the regional board is to have a credible dairy program. We firmly insist that regulatory activities be directed at those in violation of regulations, and we oppose the broad-brush approach incumbent in the current draft. There should be an opportunity provided for farmers that can demonstrate compliance to have an "off-ramp" from the regulatory highway as an incentive to be responsible and pro-active. To not provide a program with incentives for compliance is to court failure from the outset. It consumes state resources pursuing operations not in need of regulatory action. In this case as well, utilization of the CDQAP to provide access to a regulatory "off-ramp" can be a powerful positive force to leverage state resources and encourage dairy farmers to proactively protect water quality, rather than to be forced to operate with a gun to their heads.

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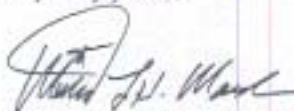
We are additionally troubled by the requirement for groundwater monitoring wells for all dairies, with no regard for their location or site-specific soil characteristics. We previously provided a peer reviewed journal publication from Dr. Thomas Harter, of the University of California, regarding the efficacy of groundwater monitoring wells related to protection of groundwater, and a letter from Marsha Campbell-Matthews, M.S., discussing the same subject. Both of these scientists have worked extensively on groundwater issues in the region, and both have concluded that there is far greater efficacy to protect groundwater by concentrating on effectively managing manure nutrient application procedures through nutrient management scheduling and planning than in directing already limited resources towards conducting groundwater monitoring. It appears from the administrative draft that the advice of these two experts to avoid over-emphasizing monitoring wells has been ignored.

Regulatory emphasis should be directed toward proper application of nutrients from manure in an agronomically sound manner through effective nutrient management planning. We believe that constructing and testing monitoring wells will ultimately prove to be counter-productive from a water quality standpoint. Beyond that, monitoring wells only reflect past history, not current practice, and in many cases the past history may be decades removed from the present. We believe that focusing a dairy farmer's attention on his nutrient management scheduling and application procedures, based on soil and crop residue testing, will provide the best means of protecting groundwater. We encourage the board to refocus the permit away from monitoring wells in areas other than those with sensitive local conditions, and redirect it toward proper and effective nutrient management, including soil and plant tissue analysis.

We have specific comments regarding the details of the administrative draft, but will forward them to you under separate cover at a later date. We hope that the comments we have submitted above will stimulate a discussion of the underlying philosophy that we find to be of such grave concern in the administrative draft. We encourage the board to direct staff to engage with us and other stakeholders in a collaborative effort to craft a program that provides reasonable cost control and meaningful incentives for compliance, will leverage state and farmer resources, is performance focused, and includes the California Dairy Quality Assurance Program as a compliance alternative.

Western United Dairymen appreciates the opportunity to provide our assessment of the administrative draft. The new permitting procedures and requirements are extremely important to the California dairy industry. We remain available for further discussion of this most vital issue.

Very truly yours,



Michael L. H. Marsh, CPA  
Chief Executive Officer

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Attachments  
cc: Paul Martin

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